

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GILL SMITH,

Plaintiff,

v.

LUCINDA BUCHANAN
and GARETH FITZPATRICK,

Defendants.

ORDER

Case No. 20-cv-884-jdp

On September 23, 2020, I assessed plaintiff Gill Smith an initial partial filing of \$68.24 due by October 14, 2020. Dkt. 4. Now plaintiff has filed a letter, which I will construe as a motion to use his release account funds to pay the \$68.24 initial partial payment. Dkt. 5. Plaintiff's motion is GRANTED.

Pursuant to 28 U.S.C. § 1915(b)(1), prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if sufficient funds do not exist in plaintiff's regular account to pay the \$68.24 plaintiff has been assessed as initial partial payment for filing this case, he can use his release account to pay the initial partial payment.

ORDER

IT IS ORDERED that,

I. Plaintiff Gill Smith's motion to use his release account funds to pay the \$68.24 initial partial payment assessed in the above case is GRANTED. If, by **October 26, 2020**, plaintiff fails to make the initial partial payment or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily

and this case will be closed without prejudice to plaintiff filing the case at a later date.

2. No further action will be taken in this case until the clerk's office receives plaintiff's initial partial payment as directed above and the court has screened the complaint as required by the Prison Litigation Reform Act, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 5th day of October, 2020.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge